IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 522 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BHAILAL M GOSAI

Appearance:

1. Special Civil Application No. 522 of 1994

MR YOGESH S LAKHANI for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/03/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Krina Thakkar for the petitioner and Mr. Brahmbhatt for the respondent. By way of this petition, the petitioner has challenged the award made by the labour court concerned in reference NO.

361 of 1991 dated 20th January, 1993 wherein the labour court has granted reinstatement in service with continuity of service without back wages for the intervening period. In this petition, rule has been issued by this Court on 24.1.1994 and interim relief in terms of para 10(C) of the petition has been granted.

Ms. Thakkar for the petitioner corporation has submitted that pursuant to the award made by the labour court, the respondent workman was reinstated in service and thereafter on 23rdNovember, 1993, he was dismissed in view of the another similar misconduct committed by him and thereafter, he raised another industrial dispute challenging the industrial dispute wherein he has been ordered to be reinstated in service without back wages and punishment of stoppage of three increments has been imposed by the labour court concerned. She has submitted that pursuant to the said award made by the labour court, the respondent was again reinstated in service and thereafter he has again been dismissed from service on 30th March, 2000 in view of the similar misconduct committed by him and against the said action of the corporation, reference NO. 669 of 2001 was filed by the workman after raising dispute to that effect which is pending before the labour court, Godhra.

I have considered the submissions made by the learned advocate Ms.Thakkar for the petitioner and Mr. Brahmbhatt for the respondent workman. I have also perused the award in question made by the labour court which is challenged by the petitioner before this Court. Before the labour court, legality, validity and propriety of the departmental inquiry was not challenged by the respondent workman. The charges levelled against the workman were serious in nature. Statement was given by the respondent before the departmental authority that he had issued ten tickets of less amount. These aspects were considered by the labour court. The labour court also considered the decision of this Court reported in 23(2) GLR page 557 and the labour court was of the view that the punishment of dismissal from service is an economical death of the workman and it would adversely affect the respondent and his family and based upon such sympathetic considerations, the labor court directed the petitioner to reinstate the respondent workman in service in exercise of the powers under section 11A of the Industrial Disputes Act, 1947. The labour court has observed that the charges levelled against the workman were serious in nature and yet, in exercise of the powers under section 11A of the Act, it ordered for reinstatement of the respondent workman. This award has

been made by the labour court on the basis of proved misconduct of misappropriation and dishonesty against which interim stay has been granted by this Court in terms of para 10(C). However, the petitioner has reinstated the respondent in service and has, thus, implemented the award made by the labour court. The respondent was ordered to be reinstated without back wages and the award of reinstatement has been implemented by the corporation. In case of GSRTC versus V.A. Malek reported in 2001(1) LLJ 180, the apex court has considered this aspect and has not disturbed the award only on the ground that the respondent workman has been reinstated in service pursuant to the award made in favour of the workman concerned. Same is the situation in the case before hand and, therefore, it would not be just and proper to disturb the award made in favour of the respondent since the same has been implemented by the corporation. Therefore, considering these facts and also considering the statement made by Ms. Thakkar that now the respondent is out of service, this petition is disposed of. Rule is discharged. Ad.interim relief is vacated with no order as to costs.

20.3.2002. (H.K.Rathod,J.)

Vyas